

**SANITIZED DEC. NO. 05-097 P -- BY GEORGE V. PIPER -- SUBMITTED FOR  
DECISION 09/26/05 -- ISSUED 09/29/05**

**SYNOPSIS**

**PERSONAL INCOME TAX – BURDEN OF PROOF MET** – State income tax assessment will be **VACATED** when Petitioners submit documentary evidence verifying the fact that the Internal Revenue Service has reversed its position and has now concluded that no additional federal income tax is owed for the year in question.

**FINAL DECISION**

On January 20, 2005, the Accounts Monitoring Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a personal income tax assessment against the Petitioners. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 2001, for tax of \$, interest through January 20, 2005, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioners.

Thereafter, by mail postmarked February 11, 2005, the Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a hearing on the petition was sent to the parties and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and W. Va. Code St. R. § 121-1-61.3.3 (Apr. 20, 2003).

There was no appearance on behalf of the Petitioners when the hearing was convened. The hearing was held, however, without an appearance on behalf of the Petitioners, *see* W. Va. Code § 11-10A-10(a) [2002] and W. Va. Code St. R. § 121-1-69.1 (Apr. 20, 2003).

At the conclusion of the hearing the presiding administrative law judge ordered that the record be kept open for sixty (60) additional days in order to receive certain requested information.

### **FINDINGS OF FACT**

1. As a result of an IRS desk audit, Petitioners' gross income for tax year 2001 was increased by \$, resulting in the West Virginia personal income tax assessment at issue.

2. In their petition for reassessment, Petitioners argued that the IRS had erred in the matter and that they had contacted the IRS to correct the mistake.

3. At the hearing, Tax Commissioner's counsel stated that he was in possession of an IRS notice which concludes that Petitioners are actually owed a refund from the federal government, which would most assuredly negate the present state tax

assessment. However, page two (2) of the notice, which explains how the computation was made, was not supplied, and additional time is necessary to secure same.

4. On September 5, 2005, this tribunal received documentation from the Petitioners detailing the fact that the IRS had now concluded that Petitioners owed no additional federal income tax for the year 2001, which would in effect negate the present personal income tax assessment which had been issued by Respondent.

### **DISCUSSION**

The only issue is whether the Petitioners have shown that the assessment is incorrect and contrary to law, in whole or in part.

In this instance, documentation finally received from the IRS conclusively showed that Petitioners owed no additional federal income tax for tax year 2001.

### **CONCLUSIONS OF LAW**

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).

2. The Petitioners-taxpayers in this matter have carried the burden of proof with respect to their contention that the personal income tax assessment issued by the

Respondent was erroneous because no additional income tax was owed to the IRS for tax year 2001. *See* W. Va. Code St. R. § 121-1-69.2 (April 20, 2003).

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioners for the year 2001, for tax of \$, interest of \$, and additions to tax of \$, **totaling \$**, should be and is hereby **VACATED**, and the Petitioners owe no further personal income tax liability for the year in question.